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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,367	01/23/2004	Robert B. Conner JR.	4050-0104P	4453

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EXAMINER

RIDLEY, RICHARD

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/762,367	Applicant(s) CONNER, ROBERT B.	
	Examiner Richard Ridley	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) 14-20, 32, 33, 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13, 21-27, 30, 31 and 35 is/are rejected.
- 7) ☒ Claim(s) 11, 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-8-05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “**elevating section**” & “**elevating section moves products**” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 21, 27, 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claims 21 & 35, the recitation “said elevating section moves products from said second conveyor onto said first conveyor” is unclear and is not described in the specification. It would appear that the conveyor belt moves products from the second conveyor to the first conveyor. How does the elevating second “moves product” from the second conveyor onto said first conveyor?

In claims 27, the recitation “second conveyor belt which is lower than said first conveyor belt...the second conveyor belt includes an elevating portion for increasing the height of the second belt so as to move products from said second conveyor onto said first conveyor”. It would appear that the conveyor belt moves products. How does the elevating second “moves product” from the second conveyor onto said first conveyor?

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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2. Claims 3 & 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "approximately" in claims 3 & 5 are relative terms which render the claims indefinite. The terms are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. What lengths are considered to be "approximately the full length".

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an

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international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1, 2, 3, 4, 5, 6, 7, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall USP 5,307,917. Hall discloses a similar device comprising a(n):

- Frame (11)
- Plurality of wheels (20)
- Plurality of conveyor supports (15) mounted in a plane (the rollers 15 are mounted in a plane) on frame
- Extendable member (14; C2/L7-9 indicates that 14 can be rollably supported to the frame 11) attached to frame and carrying at least one of said conveyor supports thereon, the extendible member is a central shaft (relative to the frame 11), additionally re clm 6, the extendable member 14 includes two sections each having an extending portion (12, 13)
- Belt storage unit (fig. 6)

5. Claims 9, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonnet USP 5,685,416. Bonnet discloses a similar device comprising a(n):

- Plurality of fixed supports (90; fig. 1)
- At least one car (24) having at least one moveable support (car section 66 located above roller 80 is movable) (a conveyor belt extends across and is carried by the movable support 66 and fixed supports 90)

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- said at least one car (24) provided at an end of said fixed supports (fig. 1 shows that car 24 is at an end of fixed supports 90)
- Conveyor belt carrier by said fixed and movable supports
- Wheeled framework (55, 59) for supporting said movable conveyor support
- Extendable portion (26) mounted on said wheel framework

6. Claims 27, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nohl et al. USP 6,360,876. Nohl discloses a similar device in fig. 3, the device comprising a(n):

- First conveyor belt (52)
- Second conveyor belt (fig. 3 shows second belt around pulley 59) that is below and parallel to the first conveyor belt, said second belt moving longitudinally from beneath said first belt

7. Claims 21, 22, 23, 24, 25, 26, 27, 30, 31, 35, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas et al. USP 6,729,464. Thomas discloses a similar device in fig. 3 & 4, the device comprising a(n):

- Framework mounted on the ground (176),
- Plurality of conveyor supports mounted on framework (48)
- Elevating section (44) for increasing the height of the conveyor belt from the frame (176), the elevating section (44) being movable upon said framework (176)
- First conveyor (fig. 1) mounted below a second conveyor (60) and movable relative to the second conveyor

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- Second conveyor (60), wherein said elevating section (44) moves product from said second conveyor onto said first conveyor

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Bonnet '416.

In Bonnet, the addition of additional cars would have been obvious to one having ordinary skill in the art at the time of the invention as such an arrangement would be determined by the desired longitudinal length of the conveyor.

Allowable Subject Matter

10. Claims 11, 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

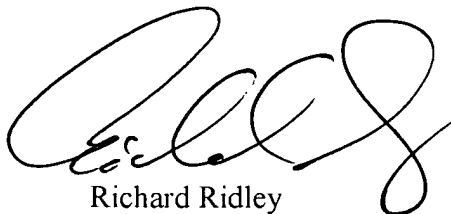
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Ridley whose telephone number is (571) 272-6917. The examiner can normally be reached on Mon-Fri 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Richard Ridley', is positioned above the printed name and date.

Richard Ridley
12 May 2005

Richard Ridley
Primary Examiner
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